

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-21008

EAST WEST RESORT TRANSPORTATION, LLC, AND TMS, LLC, D/B/A
COLORADO MOUNTAIN EXPRESS — PETITION FOR DECLARATORY ORDER
— MOTOR CARRIER TRANSPORTATION OF PASSENGERS IN COLORADO

Decided: May 5, 2005

On September 24, 2004, East West Resort Transportation, LLC, and TMS, LLC d/b/a Colorado Mountain Express, which do business under the single name of Colorado Mountain Express (CME) and will be referred to jointly as such here, filed with the Board, and served on the Colorado Public Utilities Commission (CPUC), a petition for a declaratory order. CME requests that a proceeding be instituted to determine whether 49 U.S.C. 14501(a) preempts CPUC from regulating the rates which CME may assess for scheduled, regular-route, intercity motor carrier transportation of passengers in Colorado. CME states that CPUC has commenced an enforcement action against CME, charging CME with having carried passengers on its vehicles at rates not on file with CPUC and having collected fares other than those prescribed by CPUC, in violation of Colorado law. CME claims that it is a motor carrier engaged in interstate commerce over its authorized routes, and therefore that section 14501(a) preempts CPUC from requiring CME to file its rates with the state or charge state-prescribed rates. On October 14, 2004, CPUC filed a petition to intervene and request for an order establishing a procedural schedule.

By decision served on March 21, 2005, the Board granted CPUC's petition to intervene and instituted a declaratory order proceeding. By decision served on April 8, 2005, the due dates for CPUC's reply and CME's rebuttal were extended to June 10, 2005, and June 20, 2005, respectively, in order for CPUC to conduct discovery.

On April 14, 2005, CME filed a motion for protective order. CME states that the documents requested by CPUC contain proprietary and commercially sensitive information and that the public disclosure of that information could be competitively damaging. On April 19, 2004, CPUC filed a letter stating that it intended to file a reply to CME's motion. Replies were due on May 4, 2005.

On May 4, 2005, CPUC filed a motion for an extension of time in which to file its reply. CPUC indicates that additional time, 2 days from the original reply due date, is needed because CME and CPUC are still engaged in discussions regarding discovery and

the scope of the protective order, which they expect they will resolve in the immediate future. CPUC states that CME does not oppose the motion for an extension of time.

Good cause does exist to extend the due date for CPUC's reply for 2 days, until May 6, 2005. CPUC has justified an extension of this duration.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CPUC's motion for an extension of time is granted.
2. The due date for filing a reply to CME's motion for a protective order is extended to May 6, 2005.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary